

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matters of:

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT,

Petitioner,

v.

STUDENT,

Respondent,

OAH CASE NO. N2006100720

STUDENT,

Petitioner,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT and CALIFORNIA
DEPARTMENT OF EDUCATION,

Respondent.

OAH CASE NO. N2006120803

**ORDER GRANTING MOTION FOR
CONSOLIDATION**

On October 23, 2006, the Office of Administrative Hearings (OAH) received a request for a due process hearing from attorney Vivian Billups of Parker & Covert on behalf of Newport-Mesa Unified School District (District) naming Student as Respondent. This matter is identified as OAH CASE NO. N2006100720.

On December 26, 2006, the OAH received a request for due process hearing from Student by and through attorney Steven Wyner of Wyner & Tiffany naming District as Respondent. The matter is identified as OAH CASE NO. N2006120803.

On January 11, 2007, OAH received a motion from Student requesting that the two cases be consolidated. Student requested that both matters be set for the March 12 through 21, 2007, hearing dates now established for N2006100720. On January 16, 2007, District responded in opposition to consolidation of the two cases.

APPLICABLE LAW

Section 1048(a) of the Code of Civil Procedure provides that civil matters may be consolidated to avoid unnecessary costs or delay, when actions involve a common question of law or fact. Generally, consolidation of due process matters may be granted on a case-by-case basis when the parties are the same, when there are common questions of law and fact, and when to do so would promote judicial economy and avoid potentially inconsistent rulings. Determination of whether consolidation will be granted is solely within the discretion of OAH and parties should submit argument supporting their request, regardless of whether the consolidation is unopposed among the parties to the case.

DISCUSSION

The two cases concern the same student. Additionally, the two cases involve common issues as to whether the District is required to fund an Independent Educational Evaluation (IEE) and whether District provided a Free Appropriate Public Education (FAPE). Though the District's assessment case applies only to the assessments presented at the March and April 2006 IEPs, not the prior school years included in the Student's FAPE case, the issues in both matters have a common thread. Judicial economy warrants consolidation of these cases to avoid having two hearings regarding the same testimony, evidence and legal questions, possibly with disparate outcomes.

ORDER

1. Student's motion to consolidate is granted. The applicable timelines for resolution, hearing, and decision will run from the date the complaint was filed in OAH CASE No. N2006120803.
2. Both matters are set for a prehearing conference on February 23, 2007 at 10:00 a.m. and due process hearing on March 12 through 21, 2007.

Dated: January 17, 2007

KARL S. ENGEMAN
Administrative Law Judge
Special Education Division
Office of Administrative Hearings